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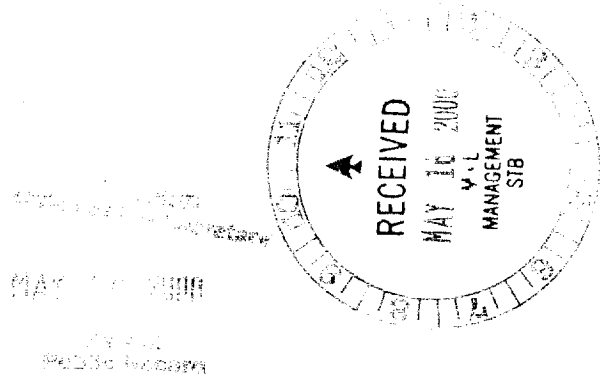
## Keokuk Junction Railway

1318 SOUTH JOHANSON ROAD • PEORIA, ILLINOIS 61607 • (309) 697-1400

May 15, 2000

By UPS

Mr. Vernon A. Williams, Secretary  
Surface Transportation Board  
Office of the Secretary  
Case Control Branch  
ATTN: STB Ex Parte No. 582 (Sub-No.1)  
1925 K Street, N.W.  
Washington, D.C. 20423



RE: Major Rail Consolidation Procedures, STB Ex Parte No. 582 (Sub-No. 1)

Dear Mr. Williams:

Please find enclosed for filing in the above referenced matter an original and twenty-five (25) copies of Comments on Major Rail Consolidation Procedures. Also enclosed is a diskette containing the text of this document in WordPerfect 6.1.

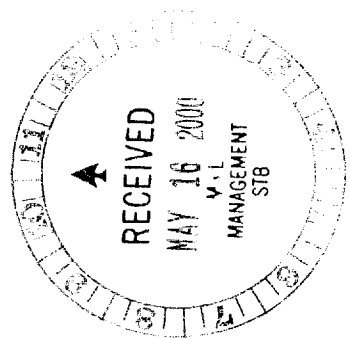
Sincerely,

Jonathan L. Kazense  
General Counsel

Enclosures

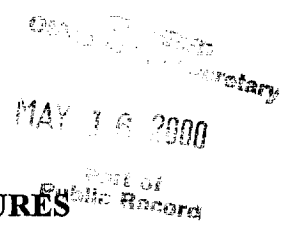
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BEFORE THE  
SURFACE TRANSPORTATION BOARD



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STB Ex Parte No. 582 (Sub-No.1)

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MAJOR RAIL CONSOLIDATION PROCEDURES



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**COMMENTS ON MAJOR RAIL CONSOLIDATION PROCEDURES**

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(309) 697-1400

Counsel for Keokuk Junction Railway Co.

May 15, 2000

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Ex Parte No. 582 (Sub-No.1)

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MAJOR RAIL CONSOLIDATION PROCEDURES

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**COMMENTS ON MAJOR RAIL CONSOLIDATION PROCEDURES**

NOW COMES THE KEOKUK JUNCTION RAILWAY CO., and hereby respectfully submits its comments on the Surface Transportation Board's order dated March 31, 2000 soliciting comments on major rail consolidation procedures.

The Keokuk Junction Railway Co. (KJRY) is a class III carrier that operates 38 miles of rail in both Iowa and Illinois. It is one of thirteen subsidiary railroads owned by Pioneer Railcorp. It interchanges with the Burlington Northern Santa Fe (BNSF) in Keokuk, Iowa and the Toledo Peoria & Western Railway (TPW), a class III carrier, at LaHarpe, Illinois.

1. Downstream Effects.

KJRY strongly agrees with the Board that considering the "downstream effects" of a merger transaction is an absolute necessity, given the current level of concentration in the industry. However, the Board should look at more than just possible strategic responses by other

non-applicant class I railroads. The downstream effect of a proposed merger on all non- applicant railroads, including class III carriers, should be examined. Class III carriers are severely limited in their ability to make “strategic responses” to a major merger proposal.

## 2. Safeguarding Rail Service.

KJRY shares the view of small shippers and other shortlines that safeguarding rail service to small shippers and shortlines is of paramount importance, as these entities have the most to lose from mergers. KJRY asserts that shortlines and shippers should be viewed with the same focus by the Board in merger proceedings. For all intents and purposes, a shortline stands in the shoes of a small shipper with respect to a Class I railroad. The trend toward bigger cars; longer trains; and more volume, in order to make a shipper “worth the while” of the Class I carrier stop has the same harmful effect on shortlines as shippers. It puts small shippers; small cities; and even whole geographic regions at an economic disadvantage which is deleterious to the national economy. By creating arbitrary and artificial barriers to entry in many industries, it exacerbates unemployment in areas that most need economic development. Many shortlines were started to preserve service to these areas, and are now prohibited from even pooling shippers cars to meet Class I volume demands. Such rules are clearly against the public interest, and nothing short of vindictive attempts to drive competitors of Class I shippers out of business.

## 3. Promoting and Enhancing Competition.

It is an axiom of Board policy that the Board exists to protect competition, not competitors. Over the years the Board has done an outstanding job of administering the law without favoritism, and KJRY certainly does not seek to change that. There comes a point,

however, when competitors must be protected, or there won't be any competitors; and even a point when competitors must be created, because there are none. In many instances, that point has been reached. Merger rules must allow for the protection of shortline and regional carriers that provide competition from arbitrary re-routes, predatory pricing, unreasonable practices, service bundling, and other monopolistic practices which often seduce or coerce shippers into agreements with the monopolist, and harm or destroy the would-be competitor.

The Board must remind merger applicants that railroads are not like other businesses. They enjoy (and rightly so) special privileges, because railroads perform a vital public service. In return, they have public service obligations. The rules must allow the Board to act quickly and decisively to protect the public interest, by protecting, and, in many instances, enhancing competition. Railroads have been given considerable latitude with rates and practices. If this is to result in the kind of improved service and reasonable cost which the nation's shippers deserve, and the economy demands, there must be effective competition. The nation's rail system cannot be allowed to fall under the control of a duopoly. The only sure thing to come out of a major rail merger is one less Class I carrier, and that reduces competition pure and simple.

Because of the potential for abuse inherent in ownership/control of tracks and terminal facilities, it may be necessary, in many cases, to mandate the sale of such facilities to shortline/regional carriers, or third-party independent entities to manage, while allowing the merged entity trackage rights so that the one-line service benefits of the merger may be maintained. Perhaps this policy could help avert some of the terminal delay problems which have plagued past mergers, and continue to plague both NS and CSX, post-Conrail.

KJRY also strongly supports revising the so-called "one lump" theory. Exclusively-served

shippers are damaged by mergers in a number of ways, including fewer routing options (beyond their serving carrier), and increased market dominance by their sole carrier. Enhancing competition through trackage/haulage rights would be helpful, although such rights must be more closely supervised to prevent the kind of abuses by the owning carriers that have led, in the past, to disuse of these rights.

#### 4. Shortline and Regional Railroad Issues.

KJRY enthusiastically endorses the shortline “Bill of Rights” proposed by the American Short Line and Regional Railroad Association, as a welcome first step. However, it is only a first step and not the complete solution to all problems. Eliminating “paper barriers” so that shortlines can interchange with all connecting carriers is worthless if there are no other connecting carriers to connect with. It is arguable that interchange with all connecting carriers is guaranteed by the Interstate Commerce Act already. Thus, the effort to enhance competition is strongly endorsed.

#### 5. “Three-to-Two” Issues.

The KJRY agrees that the Board should give greater weight to arguments of competitive harm in situations where the number of rail carrier alternatives would be reduced by merger from three to two. Unfortunately, the consolidation of the national rail system has proceeded along east and west regional lines, rather than cross-regional lines. While single-line east coast to west coast service is still not possible (and would not be if the BN-CN merger were accomplished, except insofar as west coast shippers would have direct access to Canadian Atlantic ports), regional duopolies (and, in many cases monopolies) already exist. Just two carriers totally dominate the market in the west, while two others totally dominate the east. The difference in market competition between two carriers and three carriers is huge. When there are only two

competitors they tend, in perfectly legal and non-collusive ways, to split the business. Both know they cannot legally, or physically, handle all the business, and effective competition becomes difficult, if not impossible. There must be at least three competitors to give effective competition as fighting chance. Only within a narrow belt from Lake Superior to New Orleans, where the east and west carriers come together, and the Canadian carriers enter the market (along with the KCS group), is there true competition today . Any new merger rules must attempt to assure three-carrier access.


#### 6. Merger Related Public Interest Benefits.

In any future proposed major rail consolidation the Board should intensely scrutinize any merger related benefits the class I carriers put forth. Frankly there are few if any public interest benefits of mergers. The so-called public interest benefits of mergers are rarely more than empty promises, quickly forgotten as soon as the ink is dry on the merger documents. The reality is, corporations do not merge for reasons that are in the public interest. Corporations merge because they perceive a private business advantage to be had solely for itself. That is not necessarily bad, but it is a fact that must be borne in mind.

The Board should review the promises made in the most recent round of mergers. All Class I's promised to pass on to shippers the benefits that would result from increased operating efficiencies. Instead, Class I railroads have been increasing freight rates in some cases less than one year from the time the merger was concluded. The cost savings are actually layoffs and employee buyouts. The Class I's are trying to do more with less personnel. This is done to pay for the cost of increasingly expensive mergers. There are no longer people in positions to handle problems when merger problems inevitably happen.

Addressing this problem, is, however, far more difficult than recognizing it. The STB cannot (and should not) be engaged in day-to-day oversight of railroad management. There must, however, be some accountability, an expedited and economical procedure for redress, and a real (not just theoretical) possibility of remedial action. Otherwise, merger candidates are simply being given a license to defraud the public, and the Board.

Respectfully Submitted  
Keokuk Junction Railway Co.

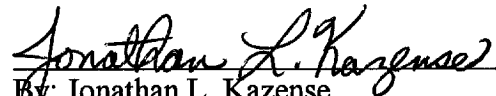
  
By: Jonathan L. Kazense  
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CERTIFICATE OF SERVICE

Pursuant to the Surface Transportation Board's order dated April 28, 2000, a copy of the foregoing Comments on Major Rail Consolidation Procedures have been served on all parties of record by United States mail, postage pre-paid, this 15th day of May, 2000.

  
By: Jonathan L. Kazense  
General Counsel  
Keokuk Junction Railway Co.